

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |                     |
|---|---|---------------------|
| In the Matters of                             | ) |                     |
|   | ) |                     |
| Special Access Rates for Price Cap            | ) | WC Docket No. 05-25 |
| Local Exchange Carriers                       | ) |                     |
|   | ) |                     |
| AT&T Corp. Petition for Rulemaking to         | ) | RM-10593            |
| Reform Regulation of Incumbent Local          | ) |                     |
| Exchange Carrier Rates for Interstate Special | ) |                     |
| Access Services                               | ) |                     |

**REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION**

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## SUMMARY

Rural Cellular Association (“RCA”) joins numerous commenters who have commended the Commission’s initiative to seek further data to continue its analysis of special access markets, with a view toward adopting rules to formulate solutions to any specific problems with the current regulatory regime identified by the Commission’s further analysis.

RCA also agrees with commenters who have argued that the Commission will not need to look far to find these problems. Rural and regional mobile wireless carriers, many of whom rely significantly on special access arrangements in providing services to their end user customers, share the concerns expressed by commenters that current regulatory mechanisms have been ineffective in ensuring that special access services provided by the large national carriers are available at reasonable rates and with reasonable terms and conditions.

It is fair to say that the current regulatory framework has largely deregulated special access pricing, and RCA agrees with commenters who demonstrate that this regulatory regime has led to supra-competitive pricing and substantial over-earning. The large national carriers have an overwhelming share of special access markets across the country, and the Commission’s current rules have failed to control this dominance in order to protect consumers and foster competition. Although RCA supports the Commission’s quest for additional data with which to analyze special access markets, the Commission also should take account of information already in the record showing that its Phase II pricing flexibility rules are not curbing the ability of the large non-rural incumbent carriers to charge exorbitant rates for their special access services.

In addition, and not surprisingly, the large incumbent special access providers are leveraging their market dominance to impose anti-competitive terms and conditions in their special access contracts, a tactic aimed at “strangling competition in the crib,” as one commenter ob-

serves. The Commission should examine closely evidence already in the record that illustrates the effectiveness of these tactics in preventing competitive entry.

RCA has long been concerned about the market power exerted by the large national carriers in the mobile wireless marketplace, and this concern also extends to the problems caused in rural markets by the special access market power abuses that are rampant and unchecked by the current regulatory regime. Rural mobile wireless carriers are being forced to pay supra-competitive rates for special access services, hampering their ability to compete and to provide affordable services to their customers. At a time when the Commission is focusing on measures that can be used to facilitate the deployment of broadband networks and services in rural America, RCA urges the Commission to revamp its special access regulatory framework to prevent market abuses from obstructing the agency's broadband goals.

RCA encourages the Commission to complete its further analysis of special access markets promptly, and then to act decisively to curb the market abuses that have already been thoroughly documented in the record. RCA also supports the proposal made by Sprint Nextel Corporation that the Commission should act now to provide interim relief to special access customers while it continues its work to develop longer-term remedies.

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**REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION**

Rural Cellular Association (“RCA”),<sup>1</sup> by counsel, hereby submits reply comments in response to a request by the Commission that interested parties address “an appropriate analytical framework for examining the various issues that have been raised”<sup>2</sup> in a rulemaking proceeding begun by the Commission five years ago.<sup>3</sup>

**I. INTRODUCTION.**

The Commission indicated in the *Public Notice* that parties should address how to answer key questions raised in the *Special Access NPRM*, including (1) whether the Commission’s exist-

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<sup>1</sup> RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve more than 80 percent of the country. Most of RCA’s members serve fewer than 500,000 customers.

<sup>2</sup> *Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the Special Access NPRM*, Public Notice, WC Docket No. 05-25, RM-10593, DA 09-2388 (rel. Nov. 5, 2009) (“*Public Notice*”). The due date for reply comments originally was February 17, 2010, but subsequently was extended to February 24, 2010. *Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the Special Access NPRM, Extension of Reply Comment Date to February 24, 2010*, Public Notice, WC Docket No. 05-25, RM-10593, DA 10-244 (rel. Feb. 12, 2010).

<sup>3</sup> *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (“*Special Access NPRM*”).

ing special access pricing flexibility rules ensure just and reasonable rates; (2) whether the pricing flexibility triggers (based on collocation by competitive carriers) are an accurate proxy for determining whether competition is sufficient to constrain special access pricing by incumbent local exchange carriers (“LECs”); (3) whether the Commission’s price cap rules ensure just and reasonable special access rates; and (4) whether the Commission’s price cap and pricing flexibility rules ensure that special access terms and conditions are just and reasonable.<sup>4</sup>

RCA agrees with commenters who believe that the current record—without gathering any additional data—is sufficient to provide answers to the questions posed by the Commission,<sup>5</sup> and RCA joins in the view expressed by numerous commenters that the special access regulatory regime established by the Commission has not worked and needs to be overhauled. Nonetheless, RCA supports the Commission’s latest initiative to analyze special access markets further before adopting any final rules, but RCA also encourages the Commission to move quickly because special access reform is urgently needed.

## **II. DISCUSSION.**

Rural and regional mobile wireless carriers rely extensively on special access arrangements in providing services, including broadband services, to their customers. RCA therefore is concerned that comments filed in response to the *Public Notice* identify numerous problems with the Commission’s current special access regulatory regime.

In the following sections, RCA expresses its support for commenters’ claims that the Commission’s rules are not guarding against abuses of market power by large non-rural incumbent LECs. These abuses are highlighted by excessive rates of return, supra-competitive charges for special access services, and unjust and unreasonable terms and conditions in special access

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<sup>4</sup> *Public Notice* at 2.

<sup>5</sup> See, e.g., Sprint Nextel Corporation (“Sprint”) Comments at 5.

contracts that are aimed at preventing competitive entry. RCA also explains how these market abuses affect consumers in rural areas as well as the provision of voice and broadband services by mobile wireless service providers. Finally, RCA indicates its support for Sprint's proposal that the Commission take immediate interim action to bring relief to special access customers while the agency continues to consider long-term reform of its special access regulations.

**A. The Special Access Regulatory Regime Is Broken and Needs To Be Fixed.**

RCA agrees with the Massachusetts Department of Telecommunications and Cable ("MDTC") that, by adopting the current regulatory framework, the Commission has "largely deregulated ILEC special access prices by allowing ILECs upward pricing flexibility without regard to their normal price cap rates in many MSAs [Metropolitan Statistical Areas] based on criteria defined [by the Commission]." <sup>6</sup>

This deregulation has not worked out well for consumers and competitors. RCA agrees with CompTel that, not surprisingly, "the record . . . reveals that the current regulatory framework governing the pricing of special access services has led to supra-competitive prices and substantial over-earning by incumbents." <sup>7</sup> The current special access market is dominated by large non-rural incumbent carriers such as AT&T and Verizon, and the current price cap and pricing flexibility regulatory regime has failed to curb these carriers' abuse of their market power. <sup>8</sup>

RCA believes that the current record provides convincing evidence that incumbent LECs—especially the large non-rural carriers—"have an overwhelming share of the special

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<sup>6</sup> MDTC Comments at 8; *see id.* at 10-12; PAETEC Holdings et al. ("PAETEC") Comments at 16-17.

<sup>7</sup> CompTel Comments at 1; *see* MDTC Comments at 6.

<sup>8</sup> *See* Sprint Comments at 5; CompTel Comments at 4-5.

access business throughout the country[.]”<sup>9</sup> and that “price cap LECs dominate the market for most special access services and . . . there is little prospect of competition arising to change that fundamental fact.”<sup>10</sup> Numerous commenters have presented evidence and arguments that one measure of this dominance is the ability of large non-rural incumbents such as AT&T and Verizon to stymie competitive entry. RCA agrees with the NCP Coalition that “competitive providers of special access face significant barriers to entry that essentially foreclose the possibility that potential competition, as opposed to actual competition, could play a substantial role in restraining price cap LEC conduct.”<sup>11</sup>

The price cap rules and pricing flexibility rules that are the principal components of the Commission’s current special access regulatory regime have not been up to the task of neutralizing the effects of this market dominance.<sup>12</sup> Although “[i]n the absence of effective competition, price cap regulation is the only check on incumbent LEC prices[.]”<sup>13</sup> the exorbitant special access rates of return for the large non-rural incumbent LECs “are an indication of both market power and the abuse of that market power.”<sup>14</sup> Although the Commission years ago established 11.25 percent as a reasonable rate of return, 2007 Automated Reporting Management Information System (“ARMIS”) data demonstrates that Verizon had a rate of return of 62 percent, AT&T had a rate of 138 percent, and Qwest had a rate of 175 percent.<sup>15</sup>

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<sup>9</sup> Sprint Comments at 17.

<sup>10</sup> No Choke Points Coalition (“NCP Coalition”) Comments at 18.

<sup>11</sup> *Id.* at 12; *see* Sprint Comments at 22-23.

<sup>12</sup> *See, e.g.*, MDTC Comments at 5 (noting that “the record indicates that the current regulations for interstate special access circuits have created conditions in which dominant providers are using their market power to charge high prices and impose unreasonable non-price terms and conditions”).

<sup>13</sup> Sprint Comments at 36 (footnote omitted).

<sup>14</sup> NCP Coalition Comments at 24.

<sup>15</sup> *Id.* at 26. Even if ARMIS data is adjusted to reflect estimated cost information, AT&T’s return on investment for special access was 30 percent, Qwest’s, 38 percent, and Verizon’s, 15 percent. *Id.* (citing



The record also provides clear evidence that the Commission's pricing flexibility rules have been as ineffective as its price cap rules in guaranteeing that, despite the market dominance of the large non-rural incumbent LECs, the rates, terms, and conditions for these carriers' special access services will be just and reasonable. One problem highlighted in the record is that, under the current Phase II pricing flexibility rules, the decision of whether to grant special access pricing flexibility is made on an MSA-wide basis. Granting pricing flexibility relief on this basis is not appropriate because "the FCC itself has recognized that competitive conditions are likely to vary among different wire centers in an MSA."<sup>16</sup> RCA agrees with the NCP Coalition's conclusion that:

The record leaves no doubt that the current pricing flexibility triggers do not reliably distinguish between areas where competition is sufficient to restrain ILEC behavior and areas where adequate competition does not exist. In 2002, even AT&T, at the time a victim rather than a beneficiary of monopoly behavior, demonstrated that the triggers permitted pricing flexibility in areas where competitive entry did not occur.<sup>17</sup>

**B. Large Non-Rural Incumbent LECs Are Earning Supra-Competitive Rates for Their Special Access Services.**

Another reason the Commission should act quickly to revamp a regulatory regime that has not reined in the dominance of AT&T, Verizon, and other large non-rural incumbent LECs in special access markets is that the record shows convincingly that these carriers have consistently exercised their market power to charge supra-competitive rates for their services. RCA agrees with PAETEC's pointed observation that "the Commission must recognize that where

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Peter Bluhm & Robert Loube, National Regulatory Research Institute, "Competitive Issues in Special Access Markets" (rev. ed. 2009) at 71). Also, PAETEC argues that "the 11.25 percent rate-of-return is outdated and should actually be in the range of eight percent making the BOCs' earnings and prices even more excessive." PAETEC Comments at 65 (footnotes omitted).

<sup>16</sup> Sprint Comments at 14; *see id.* at 31-33; MDTC Comments at 2.

<sup>17</sup> NCP Coalition Comments at 15-16.

there is smoke there is fire and in this case, ‘plumes of excessive earnings have been ignited and fueled by the BOCs’ excessive and unreasonable special access rates.’”<sup>18</sup>

By any relevant benchmark, the large non-rural incumbent LECs are not prevented by Phase II pricing flexibility from charging supra-competitive rates.<sup>19</sup> For example, Sprint points out that the three-year term rates for special access services are up to 171 percent higher than month-to-month rates for comparable unbundled network elements (DS1s and DS3s).<sup>20</sup> Sprint also states that the average monthly price it pays for DS1 special access links is seven to ten times higher than the monthly retail prices of DSL, FiOS, and cable modem services of similar or higher capacity. “This vast disparity in price indicates that the incumbent LECs are able to exploit their dominant position by charging unreasonably high rates for their special access services.”<sup>21</sup>

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<sup>18</sup> PAETEC Comments at 65 (quoting ATX Communications Services, Inc., *et al.* Reply Comments, WC Docket No. 05-25, RM-10593, July 29, 2005, at 13) (footnote omitted). *See* NCP Coalition Comments at 12 (noting that “[t]he record in this long-pending proceeding demonstrates that potential competition is not disciplining ILEC behavior in special access markets. Prices and rates of return remain supra-competitive in many areas across the country.”).

<sup>19</sup> *See, e.g.*, NCP Coalition Comments at 19 (stating that “[e]xisting data demonstrates . . . that price cap LECs have . . . used their market dominance to increase special access prices in areas where they have pricing flexibility. This is clear evidence both that ILECs enjoy market dominance in these areas, despite the areas’ having met the Commission’s ‘competitive triggers,’ and that price cap LECs are abusing this power.”).

<sup>20</sup> Sprint Comments at 27, n.88.

<sup>21</sup> *Id.* at 28. The NCP Coalition states that the incumbent LECs may argue that DS1 service is different from broadband offerings such as DSL, FiOS, and cable modem services because DS1 service is more reliable or offers guaranteed bandwidth.

To be sure, the services are not identical, and these differences may justify some difference in price—but certainly not *a ten-fold difference*. NoChokePoints members know that the enormous difference in price between these services is not due to the technical differences between the services, but rather to the fact that these retail services are offered to consumers that have at least some other competitive options, while consumers of special access services typically do not.

NCP Coalition Comments at 24 (emphasis added).

Given the Commission’s intention to examine further whether special access rates are just and reasonable, notwithstanding overwhelming record evidence that the large non-rural incumbent LECs are imposing supra-competitive rates, RCA supports a proposal made by XO Communications regarding the analytical framework the Commission should employ in its further examination of special access rates. Specifically, XO Communications suggests that “the Commission should conduct an empirical economic analysis to determine whether ILEC profit margins are supra-competitive—and hence whether they have market power—in the relevant markets where pricing flexibility has been granted . . . .”<sup>22</sup>

In support of this approach, XO Communications argues that the market power analysis (which would involve an assessment of profit margins of incumbent LECs supplying special access circuits to determine whether these profit margins are at competitive levels) “is . . . the best framework for determining whether special access markets are competitive. Further, because such profit margins will indicate how much these margins differ from those in competitive markets, they will provide the type of precise information required by the Commission to establish a new regulatory regime.”<sup>23</sup>

**C. Large Non-Rural Incumbent LECs Are Using Anti-Competitive Special Access Terms and Conditions To Preserve and Extend Their Market Power.**

Further evidence in the record regarding the abuse of market power by large non-rural incumbent LECs in their provision of special access services involves their use of anti-competitive terms and conditions in their contracts. RCA agrees with the NCP Coalition’s as-

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<sup>22</sup> XO Communications Comments at 9.

<sup>23</sup> *Id.* at 3.

assessment that “ILECs insist on anticompetitive terms and conditions in special access contracts to strangle competition in the crib in markets where it may be possible.”<sup>24</sup>

The use of early termination fees provides an example of the tactics used by large non-rural incumbent LECs to stifle competition. According to the NCP Coalition, “AT&T tariffs . . . calculate early termination liability by multiplying the number of committed circuits by the *undiscounted* month-to-month rate by the number of months remaining in the term plan. This produces an outrageous take-or-pay-*more* system that has no relation to costs.”<sup>25</sup>

In addition, XO Communications argues that numerous types of anti-competitive terms and conditions “are present in many ILEC special access contracts [and] can be wielded as weapons to sustain [the incumbents’] market power.”<sup>26</sup> Examples of these terms and conditions listed by XO Communications include (1) individually negotiated quantity discounts, in which the discount is paid back to the “first dollar” when the designated quantity is met; (2) market share discounts which reward a customer that purchases a required percentage of its requirements from the incumbent; (3) purchase growth discounts; and (4) liquidated damages far above the incumbent’s actual costs of discontinuing service, which must be paid if the customer moves to a competitor or does not meet minimum quantity commitments.<sup>27</sup>

Commenters have confirmed the predictable effects of these anti-competitive practices. For example, the NCP Coalition explains that “minimum [purchase] commitments prevent competitive entry: a potential competitor must offer extraordinarily low prices, below what is eco-

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<sup>24</sup> NCP Coalition Comments at 27. These anti-competitive terms and conditions take various forms, including tying provisions, excessive early termination fees, exclusionary terms and conditions, and lock-in through minimum commitments and “move” penalties. *Id.*; see Sprint Comments at 44.

<sup>25</sup> NCP Coalition at 28 (emphasis in original) (footnote omitted).

<sup>26</sup> XO Communications Comments at 11.

<sup>27</sup> *Id.* (citing Declaration of Michael D. Pelcovits on Behalf of Worldcom Inc., *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-I0593 (filed Jan. 23, 2003) at 5).

nomically feasible in many cases, to overcome the substantial penalties buyers face if they do not maintain their minimum volume commitments.”<sup>28</sup> The problems for competitors are made even worse because the minimum commitments are generally based on total prior payments over the entire geographic area covered by the plan. “So the competitor must offer a price below not just the average price paid to the ILEC, but its price also must account for often huge penalties not just where the competitor hopes to win business, but across the geographic area covered by the entire ILEC plan.”<sup>29</sup>

In RCA’s view, the record also clearly shows that the large non-rural incumbents use discount plans to protect their dominant market share and bar competitive entry. For example, CompTel addresses the problems caused by discount plans, explaining that “the consequences of these types of contracts is that, ‘[u]less a competitor can meet the customer’s entire demand, the customer has an incentive to stay with the incumbent and to purchase additional circuits from the incumbent, rather than switch to a competitor or purchase a portion of their demand from a competitor—even if the competitor is less expensive.’”<sup>30</sup> CompTel concludes that, since these types of contracts “prevent a customer from migrating its service to a competitor that enters a market, they prevent competition from developing, regardless of whether or not competitors otherwise have facilities or desire to compete.”<sup>31</sup>

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<sup>28</sup> NCP Coalition Comments at 29-30.

<sup>29</sup> *Id.* at 30.

<sup>30</sup> CompTel Comments at 19 (quoting United States Government Accountability Office, “FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Service,” GAO- 07-80 (Nov. 2006) at 30).

<sup>31</sup> CompTel Comments at 19. Sprint suggests that the Commission should review whether incumbent carriers are using the volume discounts (combined with unreasonably high shortfall penalties and excessive early termination penalties) to lock in customers by limiting purchases from competing carriers, thus creating barriers to entry. Sprint Comments at 37-41.

The NCP Coalition points out that the effects of these anti-competitive terms and conditions can sometimes be extreme, noting that “[s]ome purchasers even choose to lease unused circuits (‘DS-1s to nowhere’), or to buy circuits they do not need, merely to avoid triggering a contract penalty.”<sup>32</sup> The NCP Coalition also observes that, “by foreclosing the ability of purchasers to shift some of their demand to competitors, these terms and conditions limit the ability of any competitors to achieve the scale they would need to become competitors who could truly constrain special access pricing by the price cap LECs.”<sup>33</sup>

RCA believes that the existing record convincingly demonstrates that large non-rural incumbent LECs are using their market power to impose unjust and unreasonable terms and conditions in their special access contracts for the purpose of fending off competition. If the Commission’s analysis of data already in the record, as well as additional data the Commission may collect, confirms this conclusion, then the Commission should explore various remedies to correct and eliminate these practices.<sup>34</sup> For example, RCA supports the NCP Coalition’s suggestion that “the FCC should require that a subscriber may terminate a term or volume agreement without penalty where the FCC makes a finding that a particular term or condition hinders effective competition.”<sup>35</sup>

**D. Market Power Abuses in the Provision of Special Access Services Negatively Affect the Operations of Rural and Regional Mobile Wireless Carriers.**

RCA has frequently expressed concerns to the Commission regarding the market power wielded by AT&T, Verizon, and other large national carriers in the mobile wireless marketplace,

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<sup>32</sup> NCP Coalition Comments at 27.

<sup>33</sup> *Id.*

<sup>34</sup> Sprint points out that the Commission’s current rules “fail to ensure that the terms and conditions under which special access services are offered are just and reasonable.” Sprint Comments at 44 (footnote omitted).

<sup>35</sup> NCP Coalition Comments at 32.

and the adverse impact this market power has on the ability of rural and regional carriers to provide affordable services—including broadband services—to their customers.<sup>36</sup> Given the importance of special access to mobile wireless service providers, RCA therefore is encouraged by the Commission’s intention to move forward with “determin[ing] what, if any, specific problems there are with the current [special access regulatory] regime and formulat[ing] specific solutions as necessary.”<sup>37</sup>

The special access market power abuses described in previous sections of these Reply Comments are particularly problematic in rural areas because “the market for special access services is one in which much of the demand is concentrated in certain high-density areas”<sup>38</sup> The Chairman of the Kentucky Public Service Commission has observed that:

Despite the goal of the 1996 Telecom Act, in many rural areas, telecom competition has not developed a significant presence. Incumbents, particularly regional Bell Operating Companies, have a historic and continuing monopoly in rural markets. Under [special access] Phase II pricing rules, those incumbents have considerable unregulated market power for certain special access service pricing in those areas.<sup>39</sup>

These factors make it less likely that special access competition will develop in low-density areas, because of the lack of sufficient demand. In the absence of this competition (brought about both by the lack of demand and the dominance of incumbents like the regional Bell Operating Companies), rural mobile wireless carriers often must pay supra-competitive rates for special

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<sup>36</sup> See, e.g., RCA, Comments, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services, WT Docket No. 09-66, filed Sept. 30, 2009; RCA, Reply Comments, Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition, WT Docket No. 09-66, filed July 13, 2009, at 9-13.

<sup>37</sup> *Public Notice* at 2 (footnote omitted).

<sup>38</sup> NCP Coalition at 8 (footnote omitted).

<sup>39</sup> Letter from David L. Armstrong, Chairman, Kentucky Pub. Serv. Comm’n, to Julius Genachowski, Chairman, FCC, WC Docket No. 05-25, Nov. 9, 2009, at 2.

access links, and this makes it more difficult for them to compete and to provide affordable services to their customers.<sup>40</sup>

Sprint has explained that mobile wireless carriers also face some unique disadvantages in trying to obtain reasonably priced special access services, pointing out that “[a] large number of CMRS [Commercial Mobile Radio Service] providers’ cell sites are located in, and throughout, the lower-density areas of an MSA. In these sections of the MSA, there is little potential for competitive entry in the supply of special access channel termination to CMRS providers . . . .”<sup>41</sup>

In addition, the problems caused by supra-competitive special access prices and unreasonable special access terms and conditions loom even larger as rural and regional mobile wireless carriers seek to deploy broadband services. RCA agrees with the NCP Coalition’s observation that “[s]pecial access services are critical inputs for broadband services provided by rural telecommunications carriers and wireless carriers, and therefore are essential for broadband deployment and competition.”<sup>42</sup>

There can be little doubt that the ineffectiveness of the Commission’s current special access regulatory regime in curbing the anti-competitive market abuses of large non-rural incumbent carriers with substantial market power has caused unacceptable consequences for rural consumers. Because of this, RCA urges the Commission to complete its further analysis of special access markets quickly, and then to act to eliminate these market abuses. RCA is certain that

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<sup>40</sup> Small rural incumbent wireline carriers face similar problems. *See* Letter from Daniel Mitchell, Vice President, Legal and Industry, National Telecom. Coop. Ass’n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, June 24, 2009, at 1. *See also* Letter from Warren G. Lavey, Counsel for United States Cellular Corporation, to Marlene H. Dortch, Secretary, FCC, filed Oct. 19, 2009 (“U.S. Cellular Letter”), Attachment at 12 (noting that “[i]ncumbent LEC special access prices are a “[s]ignificant cost driver for regional wireless carriers.”).

<sup>41</sup> Sprint Comments at 16 (footnote omitted). *See* Sprint, Comments, WC Docket No. 05-25, filed Aug. 8, 2007, at 16-17, n.48, *quoted in* NCP Coalition Comments at 16 (noting that “virtually no competitive providers collocate for purposes of providing channel terminations to serve cell sites”).

<sup>42</sup> NCP Coalition at 4.



the presence of these abuses will be confirmed by the Commission's review of the current record and its analysis of additional data submitted in this proceeding.

Prompt action by the Commission will enhance the availability of affordable services for rural consumers. As the NCP Coalition points out, "[r]educing prices to a just and reasonable level will generate billions of dollars in cost savings . . . . Rural carriers will be able to invest in bringing high-speed Internet access to more consumers. Wireless carriers will be able to upgrade data facilities at more cell sites."<sup>43</sup>

**E. The Commission Should Grant Interim Relief That Will Begin To Correct Special Access Problems That Have Persisted for More Than a Decade.**

Problems with the Commission's special access regulatory regime emerged almost immediately after the Commission adopted the special access trigger mechanism in 1999 (pursuant to which incumbent LECs could avoid price cap regulation for special access in MSAs by meeting certain triggers, measured by collocation arrangements established by competitors).<sup>44</sup> These problems led AT&T to file a rulemaking petition in 2002 asking the Commission to reform its special access rules.<sup>45</sup>

Three years later the Commission indicated that it "anticipate[d] adopting an order prior to July 1, 2005 that will establish an interim plan to ensure special access price cap rates remain just and reasonable while the Commission considers the record in this proceeding."<sup>46</sup> No action

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<sup>43</sup> *Id.* at 5. See U.S. Cellular Letter, Attachment at 12 (noting that reducing incumbent LEC special access charges will enable wireless carriers to expand competitive broadband services).

<sup>44</sup> See *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999), *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

<sup>45</sup> Petition of AT&T Corp., *Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-1 0593 (filed Oct. 15, 2002).

<sup>46</sup> *Special Access NPRM*, 20 FCC Rcd 1994, 2036 (para. 131) (2005).

has been taken by the Commission since that time, but the problems with special access have not gone away. As Sprint explains:

The anticompetitive harms identified by AT&T in its 2002 petition persist today, and indeed have been exacerbated by structural changes in the industry, including the massive horizontal and vertical re-integrations caused by the reunion of multiple Bell Operating Companies . . . and the acquisitions of AT&T Long Distance and MCI by SBC and Verizon, respectively.<sup>47</sup>

In light of these ongoing problems, and the fact that the Commission's reform of special access will be further delayed while the agency "adopts an analytical approach enabling a systematic determination of whether or not the current regulation of special access services is ensuring rates, terms, and conditions that are just and reasonable[.]"<sup>48</sup> RCA supports Sprint's proposal that the Commission should take interim action as quickly as possible.

Sprint argues that "the Commission should be prepared to provide interim relief to special access customers while it works to fashion a longer-term remedy to address the ongoing harms created by the existing regulatory scheme"<sup>49</sup> because the existing rules appear "to have allowed price cap LECs to charge unjust and unreasonable rates for special access services and to impose unjust and unreasonable terms and conditions on special access customers."<sup>50</sup> RCA agrees with Sprint's assessment that interim action is necessary and appropriate "[i]n light of the evidence already in the record regarding the apparently unjust and unreasonable special access rates charged by the incumbent LECs, in both price cap and pricing flexibility areas . . . ."<sup>51</sup>

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<sup>47</sup> Sprint Comments at 2.

<sup>48</sup> *Public Notice* at 2.

<sup>49</sup> Sprint Comments at 45.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

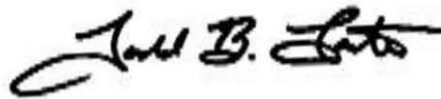
### III. CONCLUSION.

While RCA supports the Commission's plan to establish an analytical framework and to gather additional information before taking action to address the regulatory regime for special access, RCA also believes that the current record, as reflected in the comments in response to the *Public Notice*, leaves little doubt that this regulatory regime is broken and needs to be replaced. The record is replete with evidence that large non-rural incumbent LECs are using their market power to charge supra-competitive rates for special access and to impose unreasonable terms and conditions in their special access contracts, designed to keep competitors out of special access markets.

For these reasons RCA respectfully urges the Commission to act promptly to take final action in this proceeding, and also to adopt measures on an expedited basis to bring interim relief to special access customers and to curtail the anti-competitive abuses of the large non-rural incumbent LECs.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

A handwritten signature in black ink, appearing to read "Todd B. Lantor". The signature is fluid and cursive, with the first and last names being more prominent.

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